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## TITLE 326 AIR POLLUTION CONTROL BOARD

### FIRST NOTICE OF COMMENT PERIOD

#05-77(APCB)

## DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING ATTAINMENT STATUS DESIGNATIONS FOR THE FINE PARTICLES (PM<sub>2.5</sub>) NATIONAL AMBIENT AIR QUALITY STANDARD

### PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to 326 IAC 1-4-1, concerning attainment status designations for the fine particulate National Ambient Air Quality Standard (PM<sub>2.5</sub> standard). IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** 326 IAC 1-4-1; 326 IAC 2.

**AUTHORITY:** IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11.

### SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

#### **Basic Purpose and Background**

Under the Clean Air Act, U.S. EPA is responsible for: (1) establishing ambient air quality standards to protect the public health and welfare; (2) determining which areas of the country have air quality that does not meet those standards; and (3) overseeing states' efforts to develop and implement plans to improve air quality in those areas. The Clean Air Act establishes basic requirements and procedures for the clean air planning process, but U.S. EPA issues more specific guidance to help states, citizens, businesses and local governments comply with the Clean Air Act's requirements. U.S. EPA also promulgates rules to meet the Clean Air Act requirements. In this case, U.S. EPA is promulgating a rule designating certain counties, entirely or in part, as nonattainment for the PM<sub>2.5</sub> standard.

On June 29, 2004, U.S. EPA made a preliminary determination, based on input from IDEM, that certain Indiana counties should be designated as nonattainment for the PM<sub>2.5</sub> standard. IDEM presented additional information to U.S. EPA on June 1, 2004, November 19, 2004, and December 6, 2004. U.S. EPA issued the final designations on January 5, 2005 (70 FR 944).

From U.S. EPA's final determination, the following nineteen (19) counties, entirely or in part, were designated as nonattainment of the PM<sub>2.5</sub> standard on January 5, 2005: Clark, Dearborn (Lawrenceburg Township), Dubois, Elkhart, Floyd, Gibson (Montgomery Township), Hamilton, Hendricks, Jefferson (Madison Township), Johnson, Lake, Marion, Morgan, Pike (Washington Township), Porter, St. Joseph, Spencer (Ohio Township), Vanderburgh, and Warrick. Delaware County was designated unclassifiable for the PM<sub>2.5</sub> standard. U.S. EPA considered a request by IDEM to reclassify some of these counties to attainment before the April 5 effective date of the federal rule because some counties were able to meet the standard as of the end of 2004. On April 5, 2005, U.S. EPA announced that two (2) Indiana counties, Elkhart and St. Joseph, should be designated in attainment based on monitoring data, leaving seventeen (17) counties designated in nonattainment. Delaware County, which had been designated unclassifiable, was also determined to be in attainment.

On March 7, 2005, the State of Indiana filed a petition in the U.S. Court of Appeals contending that U.S. EPA's classification of certain areas of Indiana as nonattainment for the PM<sub>2.5</sub> NAAQS is "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law..." (State of Indiana v. EPA, U.S. Court of Appeals for the District of Columbia, Case No. 05-1077). Indiana requested that the court reverse the January 5, 2005, final rule concerning air quality designations for the PM<sub>2.5</sub> standard and remand the rule to U.S. EPA for modification or amendment.

In order to apply the state nonattainment rules to nonattainment counties, Indiana must adopt the federal designations. However, because Indiana anticipates that U.S. EPA will change the designation of some of these counties to attainment, IDEM is proposing a rule to only designate to nonattainment three counties that have had monitored violations of the PM<sub>2.5</sub> standard. These counties are Clark, Dubois, and Marion. IDEM may also need to revise permitting rules in 326 IAC 2 to clarify the applicability of permitting requirements in the newly designated counties. Additional counties may be added to this rulemaking based on the results of U.S. EPA's consideration of the 2004 air quality data and the petition filed by IDEM.

Proper designation of the counties determined to be nonattainment for the PM<sub>2.5</sub> standard will provide the basis in state law for IDEM to develop attainment plans for the newly designated counties. It will also ensure that air permits in these counties are issued

under the correct permitting rules. If Indiana does not adopt the federal PM<sub>2.5</sub> designations, it is possible that U.S. EPA would have to issue new source review permits for certain types of projects in the affected areas. Stricter permitting rules will apply in nonattainment counties for new and expanding sources, however, these permitting rules only apply to certain larger sources.

U.S. EPA has not yet issued the PM<sub>2.5</sub> Implementation Rule that will include changes to the New Source Review program. The proposed rule is expected by December 2005, and the final rule sometime in 2006. U.S. EPA has indicated that it will develop a guidance memo to address the time period from the effective date of the designations, April 5, 2005, to the effective date of the final PM<sub>2.5</sub> Implementation Rule. IDEM will work with sources seeking permits in nonattainment areas and U.S. EPA to ensure sources receive the proper permits in the interim.

#### **Alternatives To Be Considered Within the Rulemaking**

##### **Alternative 1. Incorporation by reference of the PM<sub>2.5</sub> designations published on January 5, 2005 (70 FR 944).**

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

##### **Alternative 2. Designate only the Indiana counties with monitored violations of the PM<sub>2.5</sub> standard.**

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Federal law designates seventeen (17) counties in Indiana as nonattainment for the PM<sub>2.5</sub> standard. This alternative would only designate as nonattainment three (3) of the seventeen (17) counties based on monitored violations. These counties are Clark, Dubois, and Marion.
- If it is a federal requirement, is it different from federal law? Yes.
- If it is different, describe the differences. This rule would only designate to nonattainment three (3) of the seventeen (17) counties identified in the federal rule.

##### **Alternative 3. No rulemaking.**

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? N/A
- If it is different, describe the differences. N/A

#### **Applicable Federal Law**

40 CFR 50 (National Primary and Secondary Ambient Air Quality Standards) and 40 CFR 81 (Designation of Areas for Air Quality Planning Purposes) are both applicable federal laws impacting this rulemaking. 40 CFR 50 (amended on July 18, 1997 (62 FR 38652)) contains the standards for PM<sub>2.5</sub>. 40 CFR 81 (amended on January 5, 2005 (70 FR 944)) lists the areas of the United States, specific to each state that U.S. EPA determines as not attaining the standards (nonattainment) for PM<sub>2.5</sub>. 40 CFR 81 will also be amended with U.S. EPA's April 5, 2005 designations that are yet to be published in the Federal Register.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. There is no fiscal impact imposed as a result of this state rule that is not currently imposed by the federal standard. Any fiscal impact was addressed during the federal rulemaking process. The rule may impact economic development in the counties designated nonattainment of the PM<sub>2.5</sub> standard, but that impact would be difficult to quantify.

Potential Fiscal Impact of Alternative 2. There is no fiscal impact imposed as a result of this state rule that is not currently imposed by the federal standard. Any fiscal impact was addressed during the federal rulemaking process. The rule may impact economic development in the three counties designated nonattainment of the PM<sub>2.5</sub> standard in this alternative, but that impact would be difficult to quantify.

Potential Fiscal Impact of Alternative 3. No fiscal impact.

#### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Christine Pedersen, Rules Section, Office of Air Quality at (317) 233-6868 or (800) 451-6027 (in Indiana).

#### **STATUTORY AND REGULATORY REQUIREMENTS**

IC 13-14-8-4 requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all

factors affecting the quality.

(6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#05-77(APCB) PM<sub>2.5</sub> Designations

Christine Pedersen Mail Code 61-50

c/o Administrative Assistant

Rules Development Section

Office of Air Quality

Indiana Department of Environmental Management

100 North Senate Avenue

Indianapolis, Indiana 46204.

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Section at (317) 233-0426.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by June 1, 2005.

Additional information regarding this action may be obtained from Christine Pedersen, Rules Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).

Kathryn A. Watson, Chief

Air Programs Branch

Office of Air Quality